

THE LIBRARY RECORDS CONFIDENTIALITY ACT, THE USA PATRIOT ACT AND PROTECTING PATRON PRIVACY: A REFRESHER

Illinois law protects the privacy of circulation and registration records maintained by libraries. The Library Records Confidentiality Act ("Confidentiality Act") forbids publishing or making information contained in registration and circulation records available to the public. Such records may be released pursuant to a court order or in an emergency situation. The USA Patriot Act, a federal law, also impacts the release of such records. The Patriot Act expires in 2015, unless reauthorized. Libraries must comply with both federal and state laws.

The Confidentiality Act allows for the release of registration and circulation records pursuant to a court order, which includes a subpoena or search warrant. Libraries should take different steps when responding to a court order than when responding to an emergency request from a law enforcement officer. The Confidentiality Act does not allow for the release of such information in any other circumstances. It does not, however, prohibit a library from publishing statistical reports regarding registration and circulation as long as no individual is identified in the reports.

Libraries should have a policy in place that sets forth the steps to take in responding to a court order. This policy should be readily available to staff. Staff should be trained to contact a supervisor, who should contact the library director or administrator, whenever a court order is received. Typically, a court order will be presented by a law enforcement officer. The library director, or other designated staff, should ask the officer for identification and should make a photocopy of the identification provided.

After receiving the order and obtaining identification from the officer, the library's employee should advise the officer that the library



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director and attorney need to be contacted to assist with the response to the court order. The employee can provide the officer with a copy of the library's policy, inform him or her that the library intends to cooperate, and notify him that the policy will be followed, which includes consulting with legal counsel before responding.

An attorney should review the court order to determine if it appears genuine and is properly executed. The attorney should also review the order to determine *what* records are being requested and *what* the *timeframe* is to respond. If any statutory or regulatory authority is cited in the subpoena, the attorney should also review that authority to make sure that the request conforms to the applicable statute or regulation. In most situations, the attorney and library director will review the information to be provided and will provide it to the law enforcement officer. If there is a serious concern with releasing the information, the library has an option to file a motion to quash the court order.

In the event of an emergency, if a law enforcement officer requests information and meets certain statutory conditions, information may be released. In order to release information in these circumstances, the law enforcement officer must represent that it is impractical to get a court order and that the officer believes there is probable cause to believe that there is an imminent danger of physical harm. In these circumstances, a library may release information that identifies a suspect, witness or victim of a crime. The library cannot release registration or circulation records that would disclose records that would indicate materials borrowed, resources reviewed or services used at the library. We recommend that a library presented with an emergency request for records require the law enforcement officer to sign a form acknowledging receipt of information.

If a library is contacted to provide information pursuant to federal law, the director or administrator should contact the library's attorney. The director may want to ask the attorney to provide a home telephone number or cellular telephone number due to the fact that such requests are often time-sensitive. If the request is from a federal law enforcement agency and the request does not comply with the Confidentiality Act, the attorney will need to review the request and determine whether the library can comply.

It is very important for a library to have a policy that addresses release of patron information and to make sure that the library staff, including new employees, is educated about the policy. It is rare that a library will need to respond to a court order, which makes it more important to have a policy readily available for reference if the library is presented with a court order or request for emergency release of patron information. Due to the sensitive nature of such requests and the legal issues, it is important to consult with your library attorney on such matters.

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